

§ 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

....

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

The issues raised in the § 2255 motion were carefully considered. For the reasons set forth in the Court’s previously issued Text Order (Filing No. 153) denying the defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. Defendant Fabian Aguilar Martinez’s Notice of Appeal (Filing No. 155), which has also been construed as a Motion for Certificate of Appealability, is denied;

2. The Memorandum of Law and Joint Motion in Support of Petitioner's Motion Pursuant to Rule 59(a)(2) (Filing No. 158) is denied;
3. The Motion Requesting Permission for this Honorable Court to Stay Filing the Enclosed Notice of Appeal Pending Resolution of this Matter (Filing No. 156) is denied as moot;
4. The Court denies the Defendant leave to proceed in forma pauperis on appeal;
5. The Clerk is directed to send a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals; and
6. The Clerk is directed to mail a copy of this Memorandum and Order to Defendant at his last known address.

DATED this 1st day of October, 2013.

BY THE COURT

s/Laurie Smith Camp
Chief United States District Judge